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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**OBJECTION OF THE UNITED STATES POSTAL SERVICE TO
UNITED PARCEL SERVICE INTERROGATORIES UPS/USPS-25-33
(June 18, 1999)**

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories UPS/USPS-25-33, filed on June 8, 1999.¹ A general objection to all of the interrogatories is presented first, followed by specific objections.

I. GENERAL OBJECTION

The Postal Service has previously filed two pleadings in this docket which set forth in great detail the Postal Service's general objection to the discovery currently promulgated by UPS. Those pleadings were the "Objection of the United States Postal Service to UPS Interrogatories UPS/USPS-1-24" (May 25, 1999) at pages 1-4, and the "United States Postal Service Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2" (June 8, 1999) at pages 1-5. On the same grounds stated in those documents, the Postal Service maintains its general objection, equally applicable to interrogatories 25 through 33, that UPS's discovery requests are inappropriate until preliminary rulings defining the procedures and scope of

¹ Although the UPS cover sheet filed on June 8 is styled to indicate that the set of interrogatories includes questions 25 through 31, the set actually continues through question 33.

permissible discovery are finalized.

II. SPECIFIC OBJECTIONS

Interrogatory UPS/USPS-25. Interrogatory 25 seeks quantitative and descriptive information on any Post E.C.S. sales visits or presentations made by the Postal Service outside the United States. Such information is irrelevant, and may be commercially sensitive. Where and how the Postal Service makes sales visits or presentations regarding its Post E.C.S. service is irrelevant to the nonpostal or postal nature of the service, but could potentially be of significant interest to a competitor such as UPS. UPS' awareness of this situation is clearly acknowledged by its proposed limitation that descriptive information need only be provided under protective conditions.

Interrogatories UPS/USPS-26, 29. Interrogatories UPS/USPS-26 and 29 both request information concerning foreign users of Post E.C.S. licensed by the Postal Service. Question 26 requests not only the number of such licensees, but also their names and addresses. The latter information is totally irrelevant to this proceeding, and should not be required to be disclosed even under protective conditions. Question 29 appears to be redundant, and is therefore objectionable as cumulative and burdensome.

Interrogatories UPS/USPS-27, 28. Interrogatories 27 and 28 request that the Postal Service provide technical details on Post E.C.S. service for documents sent to foreign recipients. Question 27 is a broad question soliciting information on "exactly" how such a message is transmitted, while question 28 seeks details on the location of the server. Once again, the irrelevance of this information to the issues before the

Commission is obvious. Moreover, to the extent that UPS can use such questions to obtain technical information otherwise unavailable to it, they constitute a fishing expedition designed to gain an unfair competitive advantage.

Interrogatory UPS/USPS-30. Interrogatory 30 requests the Postal Service to provide an answer indicating its views as to when, among a variety of proffered alternatives, "delivery" of a Post E.C.S. message has been achieved. This question is objectionable on a number of grounds. First of all, it is possible that UPS is trying to blur the distinction between the delivery of physical objects, such as letters and parcels within the context of a postal service, with the receipt of electronic messages within the context of a nonpostal service such as Post E.C.S. The mere fact that UPS feels the need to seek a definition of "delivery" in the context of Post E.C.S., when the concept of delivery is well-established with respect to postal services, underscores the fundamental distinction between the two types of services.

Much more troubling, however, is the fact that the exact issue which this interrogatory addresses, the question of when Post E.C.S. "delivery" has been achieved, is the subject of ongoing negotiation between the Postal Service, the foreign posts, and the service provider.² The alternative responses suggested in the question reflect some of the negotiating positions taken by some of the various parties. In posing this interrogatory, therefore, UPS may be trying to compel the Postal Service to lock itself into a position and thereby prejudice its ability to negotiate with an entity in which UPS has a commercial interest. Whether

² As the Presiding Officer might be aware, UPS not only is a customer of, but also has a partial equitable ownership stake in, the current Post E.C.S. service provider.

inadvertently or not, however, UPS seeks to have the Postal Service disclose judgments and opinions (not facts) which form the essence of its bargaining position at a critical time in negotiations. Obviously, disclosure under such circumstances would be entirely inappropriate, and the Postal Service objects to question 30 on that basis.

Interrogatory UPS/USPS-31. Interrogatory 31 requests information on the number of Post E.C.S. messages sent through servers in the U.S., and the number sent through servers outside the U.S. Once again, this technical information -- the location of the server used to send any particular message -- is not relevant to any of the issues that even arguably are properly before the Commission. Even if the Postal Service were able to respond to this question (and it is not clear that the information requested is available), the answers would be irrelevant.

Interrogatories UPS/USPS-32 and 33. These interrogatories request the production of information regarding payments that might occur when Post E.C.S. messages are transmitted outside of the U.S. Once again, portions of the question explicitly address the technical detail of the location of servers. Essentially, these questions go to details of the software licensing agreement under which the Postal Service provides Post E.C.S. service, and the Postal Service objects on the same grounds of relevance, privilege, and commercial sensitivity as stated on pages 18-20


of its May 25 objection to UPS question 14, also regarding contractual provisions.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Eric P. Koetting
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Eric P. Koetting

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2992; Fax -5402
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